

103^D CONGRESS
2^D SESSION

S. 2214

To amend the Social Security Act to establish grants for States to carry out Children's Ombudsman programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JUNE 7), 1994

Mr. RIEGLE (for himself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Social Security Act to establish grants for States to carry out Children's Ombudsman programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Children's Ombuds-
5 man Act".

6 **SEC. 2. GRANTS FOR STATE CHILDREN'S OMBUDSMAN PRO-** 7 **GRAMS.**

8 Title IV of the Social Security Act (42 U.S.C. 601
9 et seq.) is amended by adding at the end the following:

1 “PART G—STATE CHILDREN’S OMBUDSMAN PROGRAMS

2 “STATE PROGRAMS

3 “SEC. 491. (a) DEFINITIONS.—As used in this sec-
4 tion:

5 “(1) CHILD.—The term ‘child’ means an indi-
6 vidual who is younger than 18 years of age.

7 “(2) CHILDREN’S SERVICES.—The term ‘chil-
8 dren’s services’ means child welfare services, as de-
9 fined in section 425, child protective services, includ-
10 ing investigation and intervention in response to
11 cases of reported child abuse and neglect, and serv-
12 ices authorized to be provided under part E.

13 “(3) FACILITY.—The term ‘facility’ means—

14 “(A) a child-care institution, or a foster
15 family home, as defined in section 472(c), or an
16 entity eligible to carry out activities under part
17 E;

18 “(B) an entity eligible to carry out activi-
19 ties under part B; and

20 “(C) an entity providing child protective
21 services, including investigation and interven-
22 tion in response to cases of reported child abuse
23 and neglect.

24 “(4) LEGAL ASSISTANCE.—The term ‘legal as-
25 sistance’—

1 “(A) means legal advice provided by an at-
2 torney to children; and

3 “(B) includes—

4 “(i) to the extent feasible, counseling
5 or other appropriate assistance by a para-
6 legal or law student under the direct su-
7 pervision of an attorney; and

8 “(ii) counseling by a nonlawyer where
9 permitted by law.

10 “(5) LOCAL OMBUDSMAN ENTITY.—The term
11 ‘local Ombudsman entity’ means an entity des-
12 ignated under subsection (c)(5)(A) to carry out the
13 duties described in subsection (c)(5)(B) with respect
14 to a service area described in subsection
15 (c)(1)(D)(iii) or other substate area.

16 “(6) NONPROFIT.—The term ‘nonprofit’, as ap-
17 plied to any organization or entity, means an organi-
18 zation or entity that is, or is owned and operated by,
19 one or more corporations or associations no part of
20 the net earnings of which inures, or may lawfully
21 inure, to the benefit of any private shareholder or in-
22 dividual.

23 “(7) OFFICE.—The term ‘Office’ means the of-
24 fice established in subsection (c)(1)(D)(i).

1 “(8) OMBUDSMAN.—The term ‘Ombudsman’
2 means the individual described in subsection (c)(2).

3 “(9) PROGRAM.—The term ‘program’ means
4 the State Children’s Ombudsman program estab-
5 lished in subsection (c)(1)(D)(ii).

6 “(10) REPRESENTATIVE.—The term ‘represent-
7 ative’ includes an employee or volunteer who rep-
8 resents an entity designated under subsection
9 (c)(5)(A) and who is individually designated by the
10 Ombudsman.

11 “(11) RECIPIENT.—The term ‘recipient’ means
12 a child who receives, or who is eligible to receive,
13 children’s services.

14 “(12) STATE AGENCY.—The term ‘State agen-
15 cy’ means the agency designated under subsection
16 (c)(1)(A).

17 “(b) GRANTS.—

18 “(1) IN GENERAL.—The Secretary shall award
19 grants to not more than 10 States to carry out Chil-
20 dren’s Ombudsman programs.

21 “(2) AWARD OF GRANTS.—In awarding grants
22 under paragraph (1), the Secretary shall—

23 “(A) award the grants so as to support a
24 variety of approaches to carrying out the pro-
25 grams;

1 “(B) award at least one such grant to a
2 State to carry out a program by contract or
3 other arrangement with a nonprofit private or-
4 ganization; and

5 “(C) give preference in the award of grants
6 to States that have demonstrated the availabil-
7 ity of non-Federal sources of funds to carry out
8 State Children’s Ombudsman programs.

9 “(3) PERIOD.—In awarding a grant under
10 paragraph (1), the Secretary shall award the grant
11 for a period of 3 years.

12 “(4) LIMITATION.—A State that receives a
13 grant under paragraph (1) shall use not more than
14 10 percent of the amounts made available through
15 the grant to conduct the evaluation described in sub-
16 section (c)(1)(C).

17 “(c) ESTABLISHMENT.—

18 “(1) IN GENERAL.—

19 “(A) STATE AGENCY.—In order for a
20 State to be eligible to receive a grant under
21 subsection (b), the State shall, in accordance
22 with guidance provided by the Secretary, des-
23 ignate a State agency as the sole State agency
24 to carry out the duties described in subpara-
25 graphs (B), (C), and (D). The State may not

1 designate a State agency that is responsible for
2 the licensing or regulation of a facility in the
3 State.

4 “(B) STATE PLAN.—

5 “(i) IN GENERAL.—In order for a
6 State to be eligible to receive such a grant,
7 the State agency shall submit an applica-
8 tion to the Secretary at such time, in such
9 manner, and containing such information
10 as the Secretary may require.

11 “(ii) CONTENTS.—The application
12 shall include, at a minimum, a State plan
13 that contains information indicating the
14 manner in which the State will carry out
15 a program in accordance with the require-
16 ments of this section.

17 “(C) IMPLEMENTATION.—The State agen-
18 cy shall administer the State plan within such
19 State, and be primarily responsible for the plan-
20 ning, policy development, administration, co-
21 ordination, priority setting, and evaluation of
22 all State activities carried out under the State
23 plan.

24 “(D) PROGRAM.—The State agency shall,
25 in accordance with this section—

1 “(i) establish and operate an Office of
2 the State Children’s Ombudsman;

3 “(ii) carry out through the Office a
4 State Children’s Ombudsman program;
5 and

6 “(iii) divide the State into distinct
7 service areas, or designate the entire State
8 as a single service area, in accordance with
9 guidelines issued by the Secretary.

10 “(2) OMBUDSMAN.—The Office shall be headed
11 by an individual, to be known as the State Chil-
12 dren’s Ombudsman, who shall be selected from
13 among individuals with expertise and experience in
14 the fields regarding care and advocacy for children.

15 “(3) FUNCTIONS.—The Ombudsman shall serve
16 on a full-time basis, and shall, personally or through
17 representatives of the Office—

18 “(A) identify, investigate, and resolve com-
19 plaints that—

20 “(i) are made by, or on behalf of, re-
21 cipients or the parents or guardians of re-
22 cipients; and

23 “(ii) relate to action, inaction, or deci-
24 sions, that may adversely affect the health,

1 safety, welfare, or rights of the recipients,
2 of—

3 “(I) providers, or representatives
4 of providers, of children’s services;

5 “(II) public agencies; or

6 “(III) health and social service
7 agencies;

8 “(B) inform the parents or guardians of
9 recipients about means of obtaining children’s
10 services provided by providers or agencies de-
11 scribed in subparagraph (A)(ii);

12 “(C) provide administrative and technical
13 assistance to entities designated under para-
14 graph (5) to assist the entities in participating
15 in the program;

16 “(D)(i) analyze, comment on, and monitor
17 the development and implementation of Fed-
18 eral, State, and local laws, regulations, and
19 other governmental policies and actions, that
20 pertain to the health, safety, welfare, and rights
21 of the recipients, with respect to the adequacy
22 of facilities and children’s services for children
23 in the State;

24 “(ii) recommend to the Governor of the
25 State, the State legislature, and appropriate

1 State agencies, such changes in State laws, reg-
2 ulations, policies, and actions as the Office de-
3 termines to be appropriate; and

4 “(iii) facilitate public comment on the Fed-
5 eral, State, and local laws, regulations, policies,
6 and actions;

7 “(E)(i) provide for recruiting and training
8 representatives of the Office; and

9 “(ii) promote the development of citizen
10 organizations, to participate in the program;
11 and

12 “(F) carry out such other activities as the
13 Secretary determines to be appropriate.

14 “(4) CONTRACTS AND ARRANGEMENTS.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the State agency may estab-
17 lish and operate the Office, and carry out the
18 program, directly, or by contract or other ar-
19 rangement with any public agency or nonprofit
20 private organization.

21 “(B) LICENSING OR REGULATION ENTI-
22 TIES; ASSOCIATIONS.—Except as provided in
23 subparagraph (C), the State agency may not
24 enter into the contract or other arrangement
25 described in subparagraph (A) with—

1 “(i) an agency or organization that is
2 responsible for the licensing or regulation
3 of a facility in the State; or

4 “(ii) an association (or an affiliate of
5 such an association) of facilities.

6 “(C) WAIVER.—The Secretary may waive
7 the requirements of subparagraph (B) with re-
8 spect to not more than 3 programs.

9 “(5) DESIGNATION OF LOCAL OMBUDSMAN EN-
10 TITIES AND REPRESENTATIVES.—

11 “(A) DESIGNATION.—In carrying out the
12 duties of the Office, the Ombudsman may des-
13 ignate an entity as a local Ombudsman entity,
14 and may designate a full-time employee or a
15 volunteer to represent the entity.

16 “(B) DUTIES.—An individual so des-
17 ignated shall, in accordance with the policies
18 and procedures established by the Office and
19 the State agency—

20 “(i) identify, investigate, and resolve
21 complaints as described in paragraph
22 (3)(A);

23 “(ii)(I) review, and if necessary, com-
24 ment on any existing and proposed laws,
25 regulations, and other government policies

1 and actions, that pertain to the rights and
2 well-being of recipients or of the parents or
3 guardians of recipients; and

4 “(II) facilitate the ability of the public
5 to comment on the laws, regulations, poli-
6 cies, and actions; and

7 “(iii) carry out other activities that
8 the Ombudsman determines to be appro-
9 priate.

10 “(C) ELIGIBILITY FOR DESIGNATION.—
11 Entities eligible to be designated as local Om-
12 budsman entities, and individuals eligible to be
13 designated as representatives of such entities,
14 shall—

15 “(i) have demonstrated capability to
16 carry out the responsibilities of the Office;

17 “(ii) be free of conflicts of interest;

18 “(iii) in the case of the entities, be
19 public or nonprofit private entities; and

20 “(iv) meet such additional require-
21 ments as the Ombudsman may specify.

22 “(D) POLICIES AND PROCEDURES.—

23 “(i) IN GENERAL.—The State agency
24 shall establish, in accordance with the Of-
25 fice, policies and procedures for monitoring

1 local Ombudsman entities designated to
2 carry out the duties of the Office.

3 “(ii) CONFIDENTIALITY AND DISCLO-
4 SURE.—The State agency shall develop the
5 policies and procedures in accordance with
6 all provisions of this part regarding con-
7 fidentiality and conflict of interest.

8 “(d) PROCEDURES FOR ACCESS.—

9 “(1) IN GENERAL.—The State shall ensure that
10 representatives of the Office shall have—

11 “(A) access to facilities, recipients, and the
12 parents or guardians of recipients;

13 “(B) appropriate access to review the med-
14 ical and social records of a recipient;

15 “(C) access to the administrative records,
16 policies, and documents, of facilities, in any
17 case in which the parents or guardians of re-
18 cipients have access, or the general public has
19 access, to such records, policies, and documents;
20 and

21 “(D) access to and, on request, copies of
22 all licensing or oversight records maintained by
23 the State with respect to facilities.

1 “(2) PROCEDURES.—The State agency shall es-
2 tablish procedures to ensure the access described in
3 paragraph (1).

4 “(e) REPORTING SYSTEM.—The State agency shall
5 establish a statewide uniform reporting system to—

6 “(1) collect and analyze data relating to com-
7 plaints and conditions in facilities, to recipients, and
8 to the parents or guardians of recipients, for the
9 purpose of identifying and resolving significant prob-
10 lems; and

11 “(2) submit the data, on a regular basis, to—

12 “(A) the agency of the State responsible
13 for licensing, regulation, or oversight of facili-
14 ties in the State;

15 “(B) the Governor of the State, the State
16 legislature, and other State and Federal entities
17 that the Ombudsman determines to be appro-
18 priate; and

19 “(C) the Secretary.

20 “(f) DISCLOSURE.—

21 “(1) IN GENERAL.—The State agency shall es-
22 tablish procedures for the disclosure by the Ombuds-
23 man or local Ombudsman entities of files maintained
24 by the program, including records described in sub-
25 section (d)(1) or (e).

1 “(2) IDENTITY OF COMPLAINANT OR RECIPI-
2 ENT.—The procedures described in paragraph (1)
3 shall—

4 “(A) provide that, subject to subparagraph
5 (B), the files and records described in para-
6 graph (1) may be disclosed only at the discre-
7 tion of the Ombudsman (or the person des-
8 ignated by the Ombudsman to disclose the files
9 and records); and

10 “(B) prohibit the disclosure of the identity
11 of any complainant, recipient, or parent or
12 guardian of a recipient, with respect to whom
13 the Office maintains such files or records un-
14 less—

15 “(i) the complainant, the parent or
16 guardian of the recipient, or the legal rep-
17 resentative of the complainant or recipient,
18 parent, or guardian, consents to the disclo-
19 sure and the consent is given in writing;

20 “(ii)(I) the complainant, or the parent
21 or guardian of the recipient gives consent
22 orally; and

23 “(II) the consent is documented con-
24 temporaneously in a writing made by a
25 representative of the Office in accordance

1 with such requirements as the State agen-
2 cy shall establish; or

3 “(iii) the disclosure is required by
4 court order.

5 “(g) CONSULTATION.—In planning and operating the
6 program, the State agency shall consider the views of—

7 “(1) agencies providing services for children;

8 “(2) children;

9 “(3) providers of care for children;

10 “(4) State child advocacy groups and local child
11 advocacy groups;

12 “(5) juvenile court judges and family court
13 judges; and

14 “(6) persons representing programs that pro-
15 vide court-appointed representation for children.

16 “(h) CONFLICT OF INTEREST.—The State agency
17 shall—

18 “(1) ensure that no individual, or member of
19 the immediate family of an individual, involved in
20 the designation of the Ombudsman (whether by ap-
21 pointment or otherwise) or the designation of an en-
22 tity designated under subsection (c)(5), is subject to
23 a conflict of interest;

24 “(2) ensure that no officer or employee of the
25 Office, representative of a local Ombudsman entity,

1 or member of the immediate family of the officer,
2 employee, or representative, is subject to a conflict
3 of interest;

4 “(3) ensure that the Ombudsman—

5 “(A) except in the case of an Ombudsman
6 with a waiver under subsection (c)(4)(C), does
7 not have a direct involvement in the licensing or
8 regulation of a facility or of a provider of chil-
9 dren’s services;

10 “(B) does not have an ownership or invest-
11 ment interest (represented by equity, debt, or
12 other financial relationship) in a facility or in
13 children’s services;

14 “(C) is not employed by, or participating
15 in the management of, a facility; and

16 “(D) does not receive, or have the right to
17 receive, directly or indirectly, remuneration (in
18 cash or in kind) under a compensation arrange-
19 ment with an owner or operator of a facility;
20 and

21 “(4) establish, and specify in writing, mecha-
22 nisms to identify and remove conflicts of interest re-
23 ferred to in paragraphs (1) and (2), and to identify
24 and eliminate the relationships described in subpara-

1 graphs (A) through (D) of paragraph (3), including
2 such mechanisms as—

3 “(A) the methods by which the State agen-
4 cy will examine individuals, and immediate fam-
5 ily members, to identify the conflicts; and

6 “(B) the actions that the State agency will
7 require the individuals and such family mem-
8 bers to take to remove such conflicts.

9 “(i) LEGAL COUNSEL.—The State agency shall en-
10 sure that—

11 “(1) adequate legal counsel is available, and is
12 able, without conflict of interest, to—

13 “(A) provide advice and consultation need-
14 ed to protect the health, safety, welfare, and
15 rights of recipients; and

16 “(B) assist the Ombudsman and represent-
17 atives of the Office in the performance of the
18 official duties of the Ombudsman and rep-
19 resentatives; and

20 “(2) legal representation is provided to any rep-
21 resentative of the Office against whom suit or other
22 legal action is brought or threatened to be brought
23 in connection with the performance of the official
24 duties of the Ombudsman or such a representative.

1 “(j) ADMINISTRATION.—The State agency shall re-
2 quire the Office to—

3 “(1) prepare an annual report—

4 “(A) describing the activities carried out
5 by the Office in the year for which the report
6 is prepared;

7 “(B) containing and analyzing the data
8 collected under subsection (e);

9 “(C) evaluating the problems experienced
10 by, and the complaints made by or on behalf of,
11 recipients or parents or guardians of recipients;

12 “(D) containing recommendations for—

13 “(i) improving quality of the care and
14 life of the recipients; and

15 “(ii) protecting the health, safety, wel-
16 fare, and rights of the recipients;

17 “(E)(i) analyzing the success of the activi-
18 ties of the Office; and

19 “(ii) identifying barriers that prevent the
20 optimal operation of the Office; and

21 “(F) providing policy, regulatory, and leg-
22 islative recommendations to solve identified
23 problems, to resolve the complaints, to improve
24 the quality of care and life of recipients, to pro-

1 tect the health, safety, welfare, and rights of re-
2 cipients, and to remove the barriers;

3 “(2) analyze, comment on, and monitor the de-
4 velopment and implementation of Federal, State,
5 and local laws, regulations, and other government
6 policies and actions that pertain to facilities and
7 children’s services, and to the health, safety, welfare,
8 and rights of recipients, in the State, and rec-
9 ommend any changes in such laws, regulations, and
10 policies as the Office determines to be appropriate;

11 “(3)(A) provide such information as the Office
12 determines to be necessary to public and private
13 agencies, legislators, and other persons, regarding—

14 “(i) the problems and concerns of recipi-
15 ents, and parents or guardians of recipients;
16 and

17 “(ii) recommendations related to the prob-
18 lems and concerns; and

19 “(B) make available to the public, and submit
20 to the Secretary, the chief executive officer of the
21 State, the State legislature, the State agency respon-
22 sible for licensing, regulation, or oversight of facili-
23 ties, and other appropriate governmental entities,
24 each report prepared under paragraph (1);

1 “(4) disseminate information regarding the
2 services provided through the Office—

3 “(A) by providing a toll-free telephone
4 number for inquiries about the services;

5 “(B) through television, radio, and news-
6 paper advertising; and

7 “(C) through placement of notices in facili-
8 ties and other appropriate locations;

9 “(5)(A) not later than 1 year after the date of
10 the enactment of this section, establish procedures
11 for the training of the representatives of the Office,
12 including unpaid volunteers, based on model stand-
13 ards established by the Secretary, in consultation
14 with representatives of citizen groups, providers of
15 care for children, and the Office, that—

16 “(i) specify a minimum number of hours of
17 initial training;

18 “(ii) specify the content of the training, in-
19 cluding training relating to—

20 “(I) Federal, State, and local laws,
21 regulations, and policies, with respect to
22 facilities in the State;

23 “(II) investigative techniques;

24 “(III) alternative dispute resolution,
25 including mediation; and

1 “(IV) such other matters as the State
2 determines to be appropriate; and

3 “(iii) specify an annual number of hours of
4 in-service training for all designated representa-
5 tives; and

6 “(B) require implementation of the procedures
7 not later than 21 months after the date of the enact-
8 ment of this section;

9 “(6) prohibit any representative of the Office
10 (other than the Ombudsman) from carrying out any
11 activity described in subparagraphs (A) through (D)
12 of subsection (c)(3) unless the representative—

13 “(A) has received the training required
14 under paragraph (5); and

15 “(B) has been approved by the Ombuds-
16 man as qualified to carry out the activity on be-
17 half of the Office; and

18 “(7) permit any local Ombudsman entity to
19 carry out the responsibilities described in paragraph
20 (1), (2), (3), or (4).

21 “(k) LIABILITY.—The State shall ensure that no rep-
22 resentative of the Office will be liable under State law for
23 the good faith performance of official duties.

24 “(l) NONINTERFERENCE.—The State shall—

1 “(1) ensure that willful interference with rep-
2 resentatives of the Office in the performance of the
3 official duties of the representatives (as defined by
4 the Secretary) shall be unlawful;

5 “(2) prohibit retaliation and reprisals by a facil-
6 ity or other entity with respect to any recipient, em-
7 ployee, or other person for filing a complaint with,
8 providing information to, or otherwise cooperating
9 with any representative of, the Office; and

10 “(3) provide for appropriate sanctions with re-
11 spect to the interference, retaliation, and reprisals.

12 “(m) GUIDANCE.—The Secretary shall issue and pe-
13 riodically update guidance respecting—

14 “(1) conflicts of interest by persons described in
15 paragraphs (1) and (2) of subsection (h); and

16 “(2) the relationships described in subpara-
17 graphs (A) through (D) of subsection (h)(3).

18 “(n) TRAINING, TECHNICAL ASSISTANCE, AND RE-
19 SEARCH.—The Secretary shall reserve not more than 10
20 percent of the amounts appropriated under subsection (p)
21 to provide technical assistance and training to Offices and
22 local Ombudsman entities, and to conduct research related
23 to the State and local operation of programs. The Sec-
24 retary may provide such technical assistance and training,

1 and conduct such research, directly or by awarding grants
2 to appropriate entities.

3 “(o) COORDINATION WITH DEPARTMENT OF JUS-
4 TICE.—To carry out this Act and the State challenge ac-
5 tivities under section 285 of the Juvenile Justice and De-
6 linquency Prevention Act of 1974 (42 U.S.C. 5667c), in
7 planning for, and awarding, grants under this section, the
8 Secretary shall coordinate the award of such grants
9 with—

10 “(1) the Coordinating Council on Juvenile Jus-
11 tice and Delinquency Prevention, established under
12 section 206 of Juvenile Justice and Delinquency
13 Prevention Act of 1974 (42 U.S.C. 5616); and

14 “(2) the Office of Justice and Delinquency Pre-
15 vention of the Department of Justice, created under
16 section 201 of such Act (42 U.S.C. 5611).

17 “(p) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out this section
19 \$7,000,000 for fiscal year 1995 and such sums as may
20 be necessary for each subsequent fiscal year.”.

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